S.B.Civil Writ Petition NO.5038/2003

M/s. Ganesh Ram Badri Narayan

vs

State of Rajasthan & Ors.

DATE OF ORDER : - 28.1.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. D.N.Yadav, for the petitioner.
Mr. Ravi Bhansali, for the respondent.
Mr. L.R.Upadhyay,Dy.GA, for the State.

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Heard learned counsel for the parties.

Brief facts of the case are that the petitioner was alloted shop no.33 by the respondents in the month of Jan., 1985 on monthly rent of Rs.325/- . The rent was revised to Rs.221/- per month. The petitioner was served with an order dated 7th June, 1993 by which petitioner's allotment of shop no.33 was cancelled. The said order was challenged by the petitioner by filing the writ petition before this court. The writ petition appears to have been dismissed by the learned Single Judge, but appeal against the judgment of the learned Single Judge being D.B.Civil Special Appeal (Writ) No.295/1999 was allowed by the Division

Bench of this court vide judgment dated 13rd Nov., 2000. The Division Bench of this court held that the order passed by the appellate authority is not speaking order. It is not clear how the licence was cancelled. This court after setting aside the order of the cancellation of the licence of the petitioner's shop and after setting aside the order dated 9.2.1999 and order dated 10.2.1995 passed by the Director, Agriculture Marketing, Government of Rajasthan, Jaipur directed the respondent Director, Agriculture Marketing to re-hear the appeal and decide the same by speaking order.

In pursuance of the directions issued by the Division Bench of this court by judgment dated 13th Nov., 2000, the matter was heard by the said authority and decided vide order dated 4.2.2003, copy of which is placed on record as Annex.5.

The respondent no.2 allowed the appeal of the petitioner and set aside the order dated 7th June, 1993 by which petitioner's shop was cancelled. However, the respondent no.2 passed the order that now the petitioner shall pay the balance of the allotment fees and shall further pay all the arrears, which were due in the petitioner before 7th June, 1993 with late fees and the petitioner shall also pay the interest @ 12% per annum. The appellate authority observed that though the possession of the shop in dispute was taken from the petitioner, but

since the petitioner obtained stay order, therefor, the shop remained vacant, therefore, the petitioner is liable for the allotment fees for this period also.

This order is under challenge before this court in this writ petition.

It appears from the facts that the petitioner sought clarification about the dues raised against the petitioner in pursuance of the order of the respondent no.2 dated 4.2.2003. Copies of the replies, which were sent to the petitioners by the office of the respondents are placed on record. It appears from Annex.11 dated 8th August, 2003 and a Schedule, Annex.12 that amount has been raised against the petitioner from July, 1993 to June, 2003.

According to learned counsel for the petitioner, the respondent, illegally cancelled the licence of the petitioner vide order dated 7th June, 1993, that order was set aside by the appellate authority. The appellate authority observed that because of the fact that petitioner challenge the order dated 7th June, 1993 and obtained the stay order, the respondent though could take possession of the shop in dispute, but could not re-allot its and therefore, the respondents were deprived from its mesne profit, which could have been earned by the respondents.

Learned counsel for the respondent Sh.Ravi Bhansali submits that the petitioner was defaulter, which is fully clear from the even Annex.1 itself, which shows that number of letters were issued to the petitioner so that petitioner may clear his dues, but the petitioner did not pay the arrears. In view of the above, according to learned counsel for the respondent, the petitioner cannot be granted any indulgence and he should pay all the arrears upto the period when this order was passed by the appellate authority and for subsequent period also.

I considered the submissions of learned counsel for the parties and perused the impugned order. It is clear from the order dated 4.2.2003 passed by none-else then the respondent no.2 itself that the cancellation of licence of the petitioner was absolutely null and void as it was done without giving an opportunity of hearing to the petitioner. The petitioner in his own right approached the court and this court after satisfaction granted interim order. The petitioner by this could protect his right for the property in dispute and could save his own interest, but for this, the respondent, who passed an illegal order cannot have any grievance. In fact the stay order granted by this court saved the rights of the petitioner and it also resulted in avoiding third party interest during the period upto which illegal action of the respondent continued.

In view of the above, the respondents cannot recover any amount from the petitioner from 7th June, 1993 on account of any rent for the shop as in fact he remained out of possession due to illegal order of the Mandi Samiti. Therefore, the respondent cannot recover any penalty or interest upto the period till the possession is restored to the petitioner. It will be unjust to allow the possession with the respondent from 7th June, 1993 and direct the petitioner to pay the rent and the mesne profit or any penalty or interest for the period when the shop was in possession of the respondent.

In view of the above, the writ petition deserves to be allowed,hence allowed. The order dated 4.2.2003 is set aside so far as it relates that the petitioner shall be liable to pay the arrears from 7th June, 1993. It is also held that the petitioner shall not be liable for any of the allotment fees, rent or interest from 7th June, 1993 till the possession is given to the petitioner.

Since the petitioner's right to have the possession of the shop has already been decided in favour of the petitioner by respondent no.2 itself, therefor, the possession of the shop be delivered to the petitioner within a period of one month from today. However, it is made clear that any amount, which is due in the petitioner, which was for the period before the cancellation of order was passed, may be recovered

from the petitioner alongwith interest @ 12% per annum and the petitioner shall deposit the said amount within a period of one month from today.

(Prakash Tatia), J.

c.p.goyal/-